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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,348	08/21/2003	Raymond J. Bergeron JR.	2134.2009-001	7060

21005 7590 09/22/2006

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EXAMINER

SCHLIENTZ, NATHAN W

ART UNIT PAPER NUMBER

1616

DATE MAILED: 09/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/645,348

**Applicant(s)**

BERGERON, RAYMOND J.

**Examiner**

Nathan W. Schlientz

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-37 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

Claims 1-37 are pending.

### *Election/Restrictions*

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-10, 28-33, and 37, drawn to a method of suppressing/scavenging radical formation through contact with a compound of formulas (I) and (II) when A=CH or C(OH) and X=CH; classified in class 514, subclasses 365, 374, 385, 396, 397, 408, 422, 424, and 427.
  - II. Claims 1-7, 9, 10, 28-33, and 37, drawn to a method of suppressing/scavenging radical formation through contact with a compound of formulas (I) and (II) when A=X=N; classified in class 514, subclasses 309, 340, 341, 342, and 343.
  - III. Claims 2-8, 10, and 29-31, drawn to a method of suppressing/scavenging radical formation through contact with a compound of formula (III) when X=CH; classified in class 514, subclasses 365, 374, 385, 396, 397, 408, 422, 424, and 427.
  - IV. Claims 2-7, 10, and 29-31, drawn to a method of suppressing/scavenging radical formation through contact with a compound of formula (III) when X=N; classified in class 514, subclasses 309, 340, 341, 342, and 343.

- V. Claims 11 and 12, drawn to a method of treating a patient who is suffering from, has suffered from, or is at risk of suffering from an ischemic episode through contact with a compound of formulas (I) and (II) when A=CH or C(OH) and X=CH; classified in class 514, subclasses 365, 374, 385, 396, 397, 408, 422, 424, and 427.
- VI. Claims 11 and 12, drawn to a method of treating a patient who is suffering from, has suffered from, or is at risk of suffering from an ischemic episode through contact with a compound of formulas (I) and (II) when A=X=N; classified in class 514, subclasses 309, 340, 341, 342, and 343.
- VII. Claim 11, drawn to a method of treating a patient who is suffering from, has suffered from, or is at risk of suffering from an ischemic episode through contact with a compound of formula (III) when X=CH; classified in class 514, subclasses 365, 374, 385, 396, 397, 408, 422, 424, and 427.
- VIII. Claim 11, drawn to a method of treating a patient who is suffering from, has suffered from, or is at risk of suffering from an ischemic episode through contact with a compound of formula (III) when X=N; classified in class 514, subclasses 309, 340, 341, 342, and 343.
- IX. Claims 13 and 14, drawn to a method of treating a patient for an inflammatory disorder through contact with a compound of formulas (I) and (II) when A=CH or C(OH) and X=CH; classified in class 514, subclasses 365, 374, 385, 396, 397, 408, 422, 424, and 427.

- X. Claims 13 and 14, drawn to a method of treating a patient for an inflammatory disorder through contact with a compound of formulas (I) and (II) when  $A=X=N$ ; classified in class 514, subclasses 309, 340, 341, 342, and 343.
- XI. Claim 13, drawn to a method of treating a patient for an inflammatory disorder through contact with a compound of formula (III) when  $X=CH$ ; classified in class 514, subclasses 365, 374, 385, 396, 397, 408, 422, 424, and 427.
- XII. Claim 13, drawn to a method of treating a patient for an inflammatory disorder through contact with a compound of formula (III) when  $X=N$ ; classified in class 514, subclasses 309, 340, 341, 342, and 343.
- XIII. Claims 15, 16 and 34, drawn to a method of treating a patient for neoplastic disease or a preneoplastic condition through contact with a compound of formulas (I) and (II) when  $A=CH$  or  $C(OH)$  and  $X=CH$ ; classified in class 514, subclasses 365, 374, 385, 396, 397, 408, 422, 424, and 427.
- XIV. Claims 15, 16 and 34, drawn to a method of treating a patient for neoplastic disease or a preneoplastic condition through contact with a compound of formulas (I) and (II) when  $A=X=N$ ; classified in class 514, subclasses 309, 340, 341, 342, and 343.
- XV. Claim 16, drawn to a method of treating a patient for neoplastic disease or a preneoplastic condition through contact with a compound of formula (III)

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when X=CH; classified in class 514, subclasses 365, 374, 385, 396, 397, 408, 422, 424, and 427.

XVI. Claim 16, drawn to a method of treating a patient for neoplastic disease or a preneoplastic condition through contact with a compound of formula (III) when X=N; classified in class 514, subclasses 309, 340, 341, 342, and 343.

XVII. Claims 17-22 and 35, drawn to a method of preventing or inhibiting oxidation of a substance/treating a patient in need of antioxidant therapy through contact with a compound of formulas (I) and (II) when A=CH or C(OH) and X=CH; classified in class 514, subclasses 365, 374, 385, 396, 397, 408, 422, 424, and 427.

XVIII. Claims 17-21 and 35, drawn to a method of preventing or inhibiting oxidation of a substance/treating a patient in need of antioxidant therapy through contact with a compound of formulas (I) and (II) when A=X=N; classified in class 514, subclasses 309, 340, 341, 342, and 343.

XIX. Claims 18-22, drawn to a method of preventing or inhibiting oxidation of a substance/treating a patient in need of antioxidant therapy through contact with a compound of formula (III) when X=CH; classified in class 514, subclasses 365, 374, 385, 396, 397, 408, 422, 424, and 427.

XX. Claims 18-21, drawn to a method of preventing or inhibiting oxidation of a substance/treating a patient in need of antioxidant therapy through contact with a compound of formula (III) when X=N; classified in class 514, subclasses 309, 340, 341, 342, and 343.

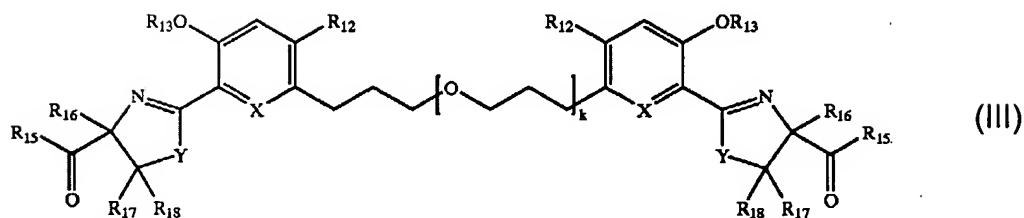
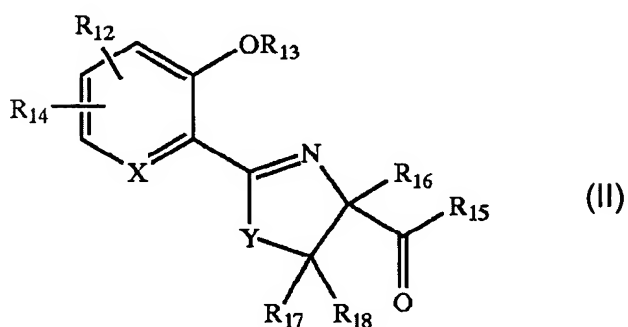
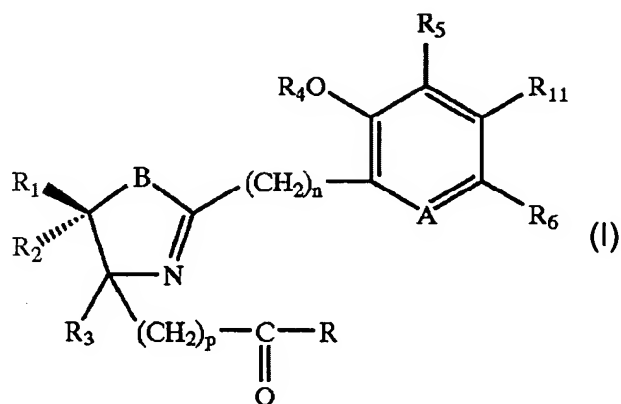
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The inventions are distinct, each from the other because of the following reasons:

2. Inventions I-XX are directed to related processes. The related inventions are distinct if the (1) the inventions as claimed are either not capable of use together or can have a materially different design, mode of operation, function, or effect; (2) the inventions do not overlap in scope, i.e., are mutually exclusive; and (3) the inventions as claimed are not obvious variants. See MPEP § 806.05(j). In the instant case, the inventions as claimed are drawn to various methods, all of which have distinct functions. Furthermore, the inventions as claimed do not encompass overlapping subject matter and there is nothing of record to show them to be obvious variants.
3. Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions require a different field of search (see MPEP § 808.02), have acquired a separate status in the art in view of their different classification, and have acquired a separate status in the art due to their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

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4. Claims 1-37 are generic to the following disclosed compounds represented by the formulas shown below:



The species are independent or distinct because the compounds of formulas I, II, and III contain a plethora of species that vary in structure and chemical properties.



5. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for search purposes, even though this requirement is traversed. Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

6. A telephone call was made to Steven G. Davis, Esq. on 09/15/2006 to request an oral election to the above restriction requirement, but did not result in an election being made. Mr. Davis has requested to receive the written restriction requirement, and his cooperation is greatly appreciated.

7. Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

#### ***Contact Information***

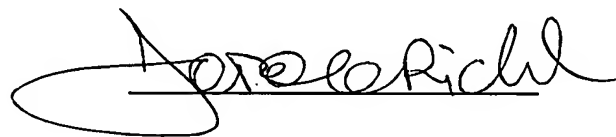
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan W. Schlientz whose telephone number is 571-272-9924. The examiner can normally be reached on 8:30 AM to 5:00 PM, Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status

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information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Nathan W. Schlientz, Ph.D.  
Patent Examiner  
Technology Center 1600

A handwritten signature in dark ink, appearing to read "Johann Richter", is written over a horizontal line. The signature is stylized with a large, looping initial "J" and a long, sweeping underline.

Johann Richter, Ph.D., Esq.  
Supervisory Patent Examiner  
Technology Center 1600